REMARKS

In the Final Office Action[1], the Examiner stated that new claim 50 "is directed to an invention that is independent or distinct from the invention originally claimed" and is withdrawn; rejected claims 1, 3-18, 26, 31, and 33-35 under 35 U.S.C. § 112, second paragraph; and rejected claims 1, 3-18, 26, 31, and 33-35 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,513,260 to Ryan ("*Ryan*"), in view of U.S. Patent No. 5,629,980 to Stefik et al. ("*Stefik*"), and further in view of U.S. Patent No. 5,446,488 to Vogel ("*Vogel*").

Applicant proposes to amend claims 1 and 31. Claims 1, 3-18, 31, 33-35, and 50 remain pending, and claim 50 has been withdrawn.

Applicant respectfully traverses the rejection of claims 1, 3-18, 26, 31, and 33-35 under 35 U.S.C. § 112, second paragraph.

Regarding claims 1 and 31, the Examiner states that "examining means" is unclear because "it is unclear how many structures are encompassed by this 'examining means for . . .' limitation" (Final Office Action at page 5). In response, Applicant has replaced --examining means-- with "examiner." Accordingly, Applicant submits that claims 1, 3-18, 26, 31, and 33-35 satisfy the requirements of 35 U.S.C. § 112, second paragraph.

Applicant respectfully traverses the rejection of claims 1, 3-18, 26, 31, and 33-35 under 35 U.S.C. § 103(a). A *prima facie* case of obviousness has not been established.

Claim 1 recites a data distribution system including, for example:

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[1] The Final Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Final Office Action.

a reproducing apparatus . . .
a recording apparatus. . .
an examiner . . .
a controller . . .

. . .

wherein the examiner:

examines whether the content data is of a first type which is distributed in an encrypted state or of a second type which is distributed in an unencrypted state,

examines whether the first medium is of a first type having a configuration enabling recorded data to be effectively read out by performing authentication processing or of a second type having no such configuration and enabling read out of the recorded data without authentication,

examines whether the reproducing apparatus is of a first type for reproducing after the authentication processing or of a second type for reproducing without the processing, and

examines whether the recording apparatus is of a first type for recording after the authentication processing or of a second type for recording without the processing.

(emphasis added). *Ryan* does not teach or suggest the claimed "examining means."

Ryan discloses a CD player that looks for an authentication signature on the CD (col. 2, lines 65-67). If the authentication signature is present, the player will play the CD. If the authentication signature is not present, the player will not play the CD (col. 2, lines 32-44). The Examiner states that *Ryan* "discloses a means for reproducing content (CD player), a recorder (CD-recorder) and means there between for examining and controlling transfer (black boxes)" (Final Office Action at page 6). The Examiner also cites col. 3, line 63 - col. 4, line 11 to disclose several elements of the claimed "examining means" (Final Office Action at page 8).

According to col. 3, line 63 - col. 4, line 11 of *Ryan*, a special instruction may exist to tell a CD player to look for an authenticating signature and only play those CDs

that have the signature. This instruction may be omitted from CDs and programs "which do not require copy-protection and for such programs both original CDs and copies thereof would play normally" (col. 3, lines 64-66). In this example, copy protection may be offered on a program by program basis. Therefore, even though the instruction may not be contained on an initialization section of a CD, a "Look for . . ." instruction is used to achieve copy protection.

According to *Ryan*, the above example of copy protection may be compromised by "special black boxes." These black boxes may remove or modify the "Look for . . ." instruction so that an illicit copy may be played. The black boxes, which the Examiner appears to correspond to the claimed "recording apparatus," are not examined by an "examining means."

Nothing in *Ryan* examines whether a black box "is of a first type having a configuration enabling recorded data to be effectively read out by performing authentication processing or of a second type having no such configuration and enabling read out of the recorded data without authentication," as recited in claim 1.

In addition, nothing in *Ryan* teaches or suggests that the black box records any information. Even assuming that the black box could record information, which Applicant does not concede, *Ryan* does not teach or suggest examining whether the black box "is of a first type for recording after the authentication processing or of a second type for recording without the processing," as further recited in claim 1.

In *Ryan*, the CD player plays the contents of the CD. The CD player normally knows whether to play the contents based on the authenticating signature. As previously stated, a black box may successfully trigger the CD player to play an illicit

copy. Regardless of whether the contents are authenticated or illicit, the CD player, which allegedly corresponds to the claimed "reproducing apparatus," is not examined to determine if it "is of a first type for reproducing after the authentication processing or of a second type for reproducing without the processing." There is no teaching or suggestion in *Ryan* that the CD player is examined.

Assuming, *arguendo*, that the CD recorder in *Ryan* could also correspond to the claimed "recording apparatus," Applicant finds no teaching or suggestion in *Ryan* that the CD recorder is examined to determine whether it "is of a first type having a configuration enabling recorded data to be effectively read out by performing authentication processing or of a second type having no such configuration and enabling read out of the recorded data without authentication" and "is of a first type for recording after the authentication processing or of a second type for recording without the processing," as further recited in claim 1.

The Examiner correctly states that *Ryan* does not disclose "wherein the usage space information indicates system information of the recording apparatus and the reproducing apparatus, ownership right information of the content data, format information of the content data, and distributing profit information obtained by the distribution of the content data," as recited in claim 1 (Final Office Action at page 7).

Stefik does not cure the deficiencies of *Ryan*.

Stefik discloses a "system for controlling use and distribution of digital works" (col. 3, lines 51-52). The system "allows the owner of a digital work to attach usage rights to the work" (col. 3, lines 56-57). Fig. 15 of *Stefik* lists usage rights grammar, and Fig. 16 depicts the "registration transaction between two repositories" (col. 27, lines

43-44). In Fig. 16, repository-1 "generates an encrypted registration identifier," "generates a message," and "transmits the registration message to repository-2" (col. 27, lines 49-67). Repository-2 "determines if it has the needed public key," and, if it does, "the identification certificate is decrypted" (col. 28, lines 6-7). The registration identifier is extracted, saved, and checked against a "hotlist" (col. 28, lines 8-11). The registration identification is verified, a performance message is transmitted to repository-1, decrypted, and, if the repositories are correct, a "nonce" is transmitted from repository-1 to repository-2 and compared (col. 28, lines 32-63).

Stefik discloses generating an "encryption registration identifier." However, Stefik does not disclose the claimed "examining means" that examines "recorded content data," the "first medium," the "reproducing apparatus," "the second medium," and the "recording apparatus," as recited in claim 1. Therefore, Stefik does not teach or suggest an examining means that "examines whether the content data is of a first type which is distributed in an encrypted state or of a second type which is distributed in an unencrypted state, examines whether the first medium is of a first type having a configuration enabling recorded data to be effectively read out by performing authentication processing or of a second type having no such configuration and enabling read out of the recorded data without authentication, examines whether the reproducing apparatus is of a first type for reproducing after the authentication processing or of a second type for reproducing without the processing, and examines whether the recording apparatus is of a first type for recording after the authentication processing or of a second type for recording without the processing," as recited in claim 1.

Vogel does not cure the deficiencies of *Ryan* and *Stefik*.

Vogel discloses a "method of distributing television programs" (col. 4, lines 14-15). *Vogel* does not teach or suggest an examining means that "examines whether the content data is of a first type which is distributed in an encrypted state or of a second type which is distributed in an unencrypted state, examines whether the first medium is of a first type having a configuration enabling recorded data to be effectively read out by performing authentication processing or of a second type having no such configuration and enabling read out of the recorded data without authentication, examines whether the reproducing apparatus is of a first type for reproducing after the authentication processing or of a second type for reproducing without the processing, and examines whether the recording apparatus is of a first type for recording after the authentication processing or of a second type for recording without the processing," as recited in claim 1.

In the Response to Arguments section, the Examiner states that the black boxes in *Ryan*, Authorization Repository 202 or Master Repository 204 in *Stefik*, and broadcaster in *Vogel* disclose various examining means. Even assuming that these elements in the cited references may examine data, which Applicant does not concede, neither these elements nor any other elements in the cited references teach or suggest the claimed <u>combination</u> as previously stated.

Accordingly, *Ryan*, *Stefik*, and *Vogel* fail to establish a prima facie case of obviousness with respect to claim 1. Claims 3-18 depend from claim 1 and are thus also allowable over *Ryan*, *Stefik*, and *Vogel*, for at least the same reasons as claim 1.

Independent claim 31, while of different scope, is also allowable over *Ryan*, *Stefik*, and *Vogel*. Claims 33-35 are also allowable at least due to their dependence from independent claim 31.

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1, 3-18, 26, 31, and 33-35 in condition for allowance. This Amendment should allow for immediate action by the Examiner.

Furthermore, Applicant respectfully points out that the final action by the Examiner presented some new arguments as to the application of the art against Applicant's invention. It is respectfully submitted that the entering of the Amendment would allow the Applicant to reply to the final rejections and place the application in condition for allowance.

Finally, Applicant submits that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicant respectfully requests reconsideration of the application and withdrawal of the rejections. Claims 1, 3-18, 26, 31, and 33-35 are in condition for allowance, and Applicant requests a favorable action.

Please grant any extensions of time required to enter this response and charge

any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: February 19, 2009   By:___/David W. Hill/_____
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